

FOREST OIL CORP.

IBLA 87-494

Decided January 23, 1989

Appeal from a decision of the Assistant Director for Program Review, Minerals Management Service, affirming an erroneous reporting assessment of \$130. MMS-87-0061-OCS.

Affirmed as modified.

1. Federal Oil and Gas Royalty Management Act of 1982: Assessments-- Regulations: Generally

When regulations governing assessments for erroneous reporting of sales and royalty remittance information have been amended to allow lower assessments, the Board may apply those regulations, absent intervening rights or countervailing public policy reasons, where to do so will benefit the appellant.

APPEARANCES: Robert W. Schelin, Esq., Legal Department, Forest Oil Corporation, Denver, Colorado; Howard W. Chalker, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Forest Oil Corporation (Forest Oil) has appealed from a February 26, 1987, decision of the Assistant Director for Program Review, Minerals Management Service (MMS), affirming an assessment by the Royalty Management Program of \$130 for erroneous reporting on Form MMS-2014, Report of Sales and Royalty Remittance.

At the top of page one of its Form MMS-2014 report for June 1986, which included information on sales from various Federal offshore leases for the month of April 1986, Forest Oil erroneously designated the month and year of the report as "06/85." Consequently, MMS assessed \$10 per line for each of the 13 lines on the first page of the report, due to the incorrect designation of the report year and month in the "header" on that page.

Forest Oil argues that because its error was in the header, rather than in one of the 13 line items on the page, the error did not constitute an incorrect report, as defined by 30 CFR 218.40(c), and therefore, no charge should be assessed (Statement of Reasons at 3). MMS supports its

assessment by arguing that "[t]he incorrect date on the top of the relevant form caused each of the 13 reports on that form to be incorrect" (Answer at 2). Further, MMS asserts that 13 corrective actions were therefore required.

The regulation in effect at the time of the assessment, 30 CFR 218.40 (1986), provided:

(b) An assessment of \$10.00 per day may be charged for each report received by the designated due date but which is incorrectly completed.

(c) For purposes of reports required for the Auditing and Financial System (AFS), a report is defined as each line item on a Form MMS-2014. The line item consists of the various information, such as Product Code or Selling Arrangement Code, relating to each Accounting Identification Number (AID).

Appellant's position is that the regulation only allows imposition of an assessment where a line item was incorrectly completed, not where a header is erroneous. That argument must be rejected where the header error causes each line item to be incorrect. MMS explained its assessment at

page 2 in a January 28, 1987, memorandum from the Chief, Fiscal Accounting Division, Royalty Management Program, to the Chief, Division of Appeals, Office of Program Review, as follows:

The AFS automatically flags all errors on a royalty report, and any header error such as the one made by Forest, automatically rejects every line item on the entire report.
* * *

The MMS uses discretion in assessing "fair" charges for incorrect reporting. In this particular assessment, MMS's exercise of this discretion is evidenced by the fact that Forest's report contained a total of 73 line items, all of which rejected as a result of the header error on page 1 of the report. [1/] A manual review of the report by MMS Lessee Contact Branch personnel revealed that the header error was made by Forest only on page 1 and therefore the assessment was made on the 13 lines contained on page 1 and not for the entire 73 line report.

Thus, it appears that appellant's error required visual inspection of the report by MMS to determine that the line item information on the

1/ The 6 page report contains 13 lines per page for various types of product information. The first 5 pages of the report provide information on each line. The 6th page includes data on only 9 lines. The total lines in the report are 74, rather than 73, as stated by MMS.

report was actually for the June 1986 report, rather than for the June 1985 report. 2/

Effective August 21, 1987, the Department revised 30 CFR 218.40 to provide:

(b) An assessment of an amount not to exceed \$10 may be charged for each report received by the designated due date but which is incorrectly completed.

* * * * *

(g) The amount of the assessment to be imposed pursuant to paragraphs (a) and (b) of this section shall be established periodically by MMS. The assessment amount for each violation will be based on MMS's experience with costs and improper report- ing. The MMS will publish a Notice of the assessment amount to be applied in the Federal Register.

52 FR 27545-46 (July 22, 1987).

On the same date, MMS published a Notice establishing the assessment amounts. 52 FR 27593 (July 22, 1987). That Notice provides, in relevant part, "A reduced rate of \$3 per line will be assessed for erroneous lines caused by a header error * * *." Although the Notice states that the assessment rates established therein will apply to reports received on or after September 1, 1987, it is well established that, in the absence of countervailing public policy reasons or intervening rights, the amended version of a regulation may be applied to a pending matter if such appli- cation will benefit the affected party. See Exxon Corp., 95 IBLA 165, 175 (1987). In fact, in Conoco, Inc., 102 IBLA 230 (1988), this Board remanded several assessment decisions to MMS for reconsideration in light of the same regulatory revision cited above.

2/ It is difficult to understand MMS's claim on appeal that the error required 13 separate corrective actions, since the report was apparently rejected by the AFS before it accepted any information. The report in question consists of six copies of the single page Form MMS-2014. Each Form MMS-2014 is comprised of 13 lines. Each line is divided into 15 separate columns for reporting various items of product information. Although the header on page one contained the error, the header on each of the next 5 pages is correctly completed with the designation "06/86." The first page of the report is signed and dated June 26, 1986. In addi- tion, each line on the report contained a column for including the "Sales Month/Year." Every line entry on appellant's report included the same information in that column--"04/86." Thus, visual inspection would have quickly determined the header error, and a single correction of the header error presumably would have made the entire report acceptable by the AFS.

Therefore, under the circumstances, we will reduce the assessment from \$130 to \$39 in accordance with the amended regulations.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Bruce R. Harris
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge